

**CARGILL SALT PONDS, REDWOOD CITY, CALIFORNIA-  
CLEAN WATER ACT (CWA) JURISDICTIONAL DETERMINATION**

**BACKGROUND:**

- Prior to development, the Redwood City site was a 1,365-acre area of tidal marsh interspersed with numerous sloughs connected to San Francisco Bay.
- Development of the site into a salt plant began in 1901; the salt ponds produced their first salt crops in October 1902. By 1951, the current borders and operations of the salt plant were established. Since that time, the plant has continuously produced salt.
- The levees on the site are configured to move highly saline water sequentially through a series of ponds to produce salt and hold residual bitterns. The levees are intended to separate the salt production process from direct inputs of San Francisco Bay water, except for limited circumstances when water is pumped in or out of the ponds.
- “Fastlands”—wetlands that were converted to dry upland prior to the enactment of the 1972 Clean Water Act—are not considered waters of the United States.
- In 2009, DMB Redwood City Saltworks, a developer, began the process of planning an urban development and tidal marsh restoration project on the site.
- In May 2012, the developer requested the Corps prepare a final jurisdictional determination of the extent of waters at the Redwood City site that are covered by the CWA and the Rivers and Harbors Act.
- The Corps makes CWA jurisdictional determinations in nearly all circumstances. However, a 1989 MOU between the EPA and the Corps provides that EPA can designate certain jurisdictional determinations as “special cases” and make the final determination under the CWA on the jurisdictional status of “waters of the United States.”
- In March 2015, EPA designated the CWA jurisdictional determination at the Redwood City site as a “special case” under the MOA.
- In March 2019, EPA finalized its jurisdictional determination for this site. EPA concluded that the Salt Plant is non-jurisdictional fast land. EPA reached this conclusion considering the combination of circumstances at the Salt Plant, including the separation of the Salt Plant over a century ago from the surrounding waters, the federally-authorized excavating, filling, and industrial production and maintenance activities that have taken place at the Salt Plant since that time, and the use of water at the plant as merely a component of a highly engineered industrial operation. EPA’s analysis is consistent with the analysis performed by the Corps before EPA exercised its special case authority in 2015.

**TALKING POINTS:**

## **Ex. 5 Deliberative Process (DP)**